

ORIGINAL

OFFICIAL FILE

ILLINOIS COMMERCE COMMISSION

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Ken Bourkland

-vs-

Commonwealth Edison Company

**Complaint as to service in St. Charles,
Illinois.**

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06-0726

**RESPONDENT'S MOTION TO COMPEL
OR, IN THE ALTERNATIVE,**

RESPONDENT'S MOTION TO STRIKE AND DISMISS COMPLAINT

Now comes the Respondent, Commonwealth Edison Company ("Respondent" or "ComEd"), by its attorney, Mark L. Goldstein, and files this Motion to Compel the Complainant, Ken Bourkland to provide complete and responsive answers to its First and Second Data Requests, or, in the alternative, moves the Illinois Commerce Commission ("Commission") to Strike and Dismiss the Complaint, and in support thereof, states:

1. Respondent mailed the attached Exhibit 1, Respondent's Second Data Request to Complainant, on May 1, 2007, requiring a response on or before May 30, 2007.
2. In response to the Second Data Request, on May 15, 2007, Complainant sent a letter to Respondent's counsel, the Chief Clerk of the Commission, and others, in effect, refusing to provide the information requested in the Second Data Request, attached as Exhibit 2.
3. Previously, on April 11, 2007, Respondent had filed a Motion to Compel stating that the Complainant failed to substantively respond to the Respondent's first Motion to Compel.
4. As set forth above, pursuant to 83 Ill. Adm. Code 200.350, the parties have consulted on discovery issues and the time is now ripe for this second motion to compel responses by the Complainant.
5. Pursuant to 83 Ill Adm. Code 200.340, it is the policy of the Commission to obtain full disclosure of all relevant and material facts to a proceeding. Respondent's Second Data Request clearly seeks relevant and material facts regarding the instant complaint and Respondent is entitled to the information and documents requested.
6. It is apparent from the correspondence of the Complainant both from a previous date of April 30, 2007, which was filed with the Clerk of the Commission on April 30, 2007 and Exhibit 1 herein, Complainant has no intention of providing any further responses to the First Data Request and has no intention of responding at all to the Second Data Request.

7. At the status hearing on April 18, 2007, the Administrative Law Judge ("ALJ") stated: "...it's my expectation to everybody involved in the case, that discovery will have to take place and that the exchange of documents is paramount to the process and is simply a requirement to undertake." (Tr. 91) (Emphasis supplied)

8. Complainant should either be compelled to respond to the outstanding Data Request of Respondent's First and Second Data Requests, or, in the alternative, the ALJ should strike the Complaint and the Commission should dismiss the Complaint.

WHEREFORE, Respondent respectfully requests that the Administrative Law Judge ("ALJ") and the Illinois Commerce Commission (1) compel the Complainant, Ken Bourkland, to provide complete and responsive answers to the First and Second Data Requests; or in the alternative, (2) strike the Complaint of Ken Bourkland in this docket and dismiss the Complaint; and (3) grant ComEd such other and further relief that the ALJ and the Commission deem prudent under the circumstances.

Respectfully submitted,
Commonwealth Edison Company

By: 
Mark L. Goldstein, Its Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2007, I served the foregoing Respondent's Motion to Compel, or in the Alternative, Respondent's Motion to Strike and Dismiss Complaint, by causing a copy of same to be placed in the U.S. Mail, first class postage affixed, addressed to each of the parties indicated below in the captioned matter:

Ms. Elizabeth A. Rolando
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Mr. Ken Bourkland
6N347 Old Homestead Rd.
St. Charles, IL 60175

Mr. Ian Brodsky
Administrative Law Judge
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601


Mark L. Goldstein